

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 410 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHINUBHAI NAGJIBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioners
MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 12/09/97

ORAL JUDGEMENT

Rule. Ld.APP Shri S.T.Mehta waives the service of Rule.

Section 498 of IPC read along with Section 198 of Code of Criminal Procedure makes the position very clear that, for offence of adultery, the complaint has to be lodged by husband of the woman. Necessarily, therefore, if the woman alleged to be the participant in adulterous act is a widow, there is no question of commission of offence under Section 498 of IPC.

Chapter 20 in which the offence under Section 498 occurs itself is entitled of offences relating to marriage. It is a provision of IPC. Therefore, with a

view to protect the sanctity of marriage and necessarily therefore, pre-supposes subsistence of marital tie. Death of a man with whom the woman was married would necessarily bring the said tie to an end and there is no marriage to be protected and there is no marriage against which there could be an offence.

That being the position, obviously, there cannot be an offence under Section 498 of IPC and the woman being a widow, there could not have been complaint filed with regard to the alleged adulterous act by her husband. In this background, the charge under Section 498 would not survive.

Once this position is accepted, even if she has committed suicide, the widow with whom adulterous relation of the accused is alleged, that could not be the cause of her committing suicide. If the amorous advances made by the man who is now accused towards the widow has not led to her death, but as per the material on record, it is her own relations including her mother and the village people who were outraged by openly indecent behaviour have created a situation whereby the deceased had committed suicide, the man with whom she was staying, cannot be held responsible.

Thus, on all counts, it is quite clear that case against the accused petitioner no.1 in Sessions Case No.250 of 1993 could not be sustained. For that very reason, there could not be any question of remaining accused having either added or abetted the commission of crime.

Ld.Advocate Shri Shah pointed out that similar application at Exh.12 at page 36 was given before the trial Court pertaining to charge under Section 498 of IPC only, and the accused, therefore, cannot be said to have requested for removal of charge under Section 306 as well and the remaining offences.

In this background, he requested that this being a revision application where by necessary amendment he has also prayed for quashing of the entire case. His request, in my opinion, is eminently justified. From the record, it is clear that the chargesheet was submitted for offences under Sections 498-A and 306 of IPC which is also totally misconceived. This position was further compounded by the ld. Judge when he proceeded to charge under Sections 498, 306, 365, 347, 148, 149 read with 114 of IPC. However, for the reasons stated above, none of the above charges will be sustained and, obviously, there

cannot be anything on record to support the charge.

The revision application, therefore, stands allowed. The case pending before the trial Court is quashed and the process issued is set aside. Rule is made absolute accordingly.

sreeram.